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TRANSMITTAL FORM

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Total Number of Pages in This Submission

Application Number	10/606,133
Filing Date	June 25, 2003
First Named Inventor	Paolo Fortina
Art Unit	1634
Examiner Name	Diana B. Johannsen
Total Number of Pages in This Submission	5
Attorney Docket Number	CHOP.0182US

ENCLOSURES (Check all that apply)

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SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name	DANN, DORFMAN, HERRELL AND SKILLMAN - Customer No. 000110		
Signature			
Printed name	Robert C. Netter, Jr., Ph.D.		
Date	September 20, 2006	Reg. No.	56,422

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Date	September 20, 2006

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of **OPIE**) Examiner: Diana B. Johannsen
Paolo Fortina et al.)
Serial No. 10/606,133) SEP 22 2006 Art Unit: 1634
Filed: June 25, 2003)
For: "Methods for Detection of)
Genetic Alterations)
Associated with Cancer")
UR File No: CHOP.0182US

RESPONSE TO NOTICE OF NON-COMPLIANT RESPONSE AND STATEMENT OF
SUBSTANCE OF INTERVIEW

In the paper dated August 30, 2006, the Examiner contends that the June 13, 2006 Official Action response is not fully responsive to the March 13, 2006 Official Action because the claims encompassed by the elected invention are not identified.

Applicants continue to traverse the restriction requirement set forth in the March 13, 2006 Official Action for the reasons stated in the June 13, 2006 Official Action response. Indeed, an objective reading of the claims reveals that they are drawn to closely related subject matter and, therefore, do not comprise separate and distinct inventions. Furthermore, Applicants note that the MPEP at §803.02 states that "in applications containing a Markush-type claim that encompasses at least two independent or distinct inventions, the examiner may require a provisional election of a single species prior to examination on the merits." Accordingly, should the Examiner determine that a restriction must be made, Applicants respectfully submit that a requirement for an election of species is clearly more appropriate as it is more consistent with the guidance provided in the MPEP than a restriction requirement. Moreover, an election of species would be less onerous for Applicants and would allow for the

examination of the subject matter which Applicants regard as their invention.

To be fully responsive to the Office communication dated August 30, 2006, Applicants elect, with traverse, the genetic alteration of deletion. All of the claims (i.e., claims 1-8) read on the elected invention.

It is believed that the present submission is fully responsive to the issues raised in the paper dated August 30, 2006. It is noted that a shortened statutory response period of one (1) month was set forth in the August 30, 2006 Official Action. Therefore, the initial due date for response is September 30, 2006.

STATEMENT OF SUBSTANCE OF INTERVIEW

This Statement of Substance of Interview is being submitted in accordance with §713.04 of the Manual of Patent Examining Procedure to make of record a telephone interview held between Examiner Diana Johannsen, Kate Rigaut (PTO Registration No. 43,047), and the undersigned on or about September 18, 2006.

A telephone interview was held on or about September 18, 2006 between the undersigned, Kate Rigaut, and Examiner Johannsen for the purpose of clarifying the March 13, 2006 Official Action and the August 30, 2006 Office Communication. At the outset, the undersigned sought clarification of the March 13, 2006 restriction requirement with regard to the groups of invention from which Applicants were required to elect. Examiner Johannsen apologized for the general lack of clarity in the restriction requirement and explained that claim 1 would be examined as presented and to its full breadth, regardless of the invention elected. The undersigned also stated that Applicants continue to disagree with the restriction requirement for the reasons made of record in the June 13, 2006 Official Action response. Examiner Johannsen

indicated that the arguments set forth in the response to the restriction requirement had not been fully considered. However, Examiner Johannsen also stated that the restriction requirement would be reconsidered, particularly with regard to whether an election of species or invention should be required, in view of recent guidance provided at the USPTO. The undersigned agreed to file the instant response to the August 30, 2006 Office Communication with the understanding that Examiner Johannsen would reconsider the restriction requirement issued March 13, 2006.

Applicants respectfully submit that the present invention represents an advance in the art of mutation detection. Accordingly, early and favorable action on this application is earnestly solicited.

Respectfully submitted,
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By 
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